IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 182 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BECHARBHAI BHAVANBHAI

Versus

POPATBHA NARSINH

Appearance:

MR KETAN A DAVE for Petitioner

MR SHAKTISINH GOHIL for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/02/2001

ORAL JUDGEMENT

#. Rule. Mr.Gohil waives service of rule.

#. In the facts and circumstances of the case, the

matter is taken up for final hearing.

#. The revisioner is the original plaintiff who is aggrieved by the order passed below Exh.19 by the Civil Judge (Junior Division) at Ghogha in Regular Civil Suit No.8/99 on 17.1.2001.

#. Facts of the case can be briefly stated thus;

4.1 The present plaintiff preferred the said suit for declaration and injunction. In that suit, the plaintiff tendered an application for appointment of the Commissioner for preparing the Panchnama of the disputed property. The application came to be allowed and Commissioner came to be appointed. Accordingly, the Commissioner prepared his report.

4.2 Subsequently, the defendants came with an application Exh.19 with a case that the Commissioner has prepared the Panchnama, but all the relevant details are not reflected in the Panchnama which would include the details of existing trees, well, hedges, boundaries etc. of the disputed property as well as of the surrounding property, and therefore, another Commissioner may be appointed who would prepare a fresh Panchnama with full details of the disputed property existing thereon.

4.3 The trial court after considering the rival side contentions found that, necessary details are required for deciding the dispute between the parties. Even, prima facie, details are not incorporated in the Commissioner's report and in order to facilitate the court for arriving at the conclusion, it is necessary that, fresh Panchnama is prepared and report is obtained by appointing a Commissioner for the purpose. Ultimately, the trial court passed the impugned order on 17.1.2001 appointing a Commissioner to prepare a detailed Panchnama of the disputed property alongwith the details of the northern boundaries of the disputed property.

#. Aggrieved by this order, the plaintiff has preferred this revision application.

#. Learned advocate Mr.Dave appearing for the revisioner has taken this court through the order passed by the trial court. Mr.Dave submitted that, the revisioner has no objection to the preparation of the Panchnama, but the Panchnama must be with full details, that the trial court found to be missing in the report prepared by the earlier Commissioner. The trial court has committed an error in not incorporating those details in the operative part of

the order impugned, and therefore, this revision application may be allowed. According to Mr.Dave, the Court Commissioner may not read whole order, may be guided by the operative part of the order and ultimately whole exercise of preparation of the Panchnama by the new Commissioner may result into futility. He, therefore, urged to entertain this revision application.

#. Mr.Gohil, learned advocate appearing for the respondents has opposed this revision application. According to him, this revision is not tenable. He has placed reliance on the decision in the case of Melabhai Kevaldas Prajapati and others Vs. State of Gujarat and another as reported in 1999(3) GCD 1707 (Gujarat) to support of his arguments. He submitted that, if the court requires a detailed report of the Commissioner to facilitate the Court to arrive at just conclusion of the case, there is no embargo on appointment of the second Commissioner under Order 26, Rule 10 of the Civil Procedure Code. He, therefore, urged that, this revision may be dismissed.

#. Mr.Dave, in reply, tried to distinguish the judgment on facts and submitted that, facts of that case are totally different than the facts of the present case, and therefore, the said decision will not be applicable to the facts of the present case.

#. Having regard to the contentions raised by both the sides, it becomes amply clear that the plaintiff/revisioner is aggrieved by the appointment of the second Commissioner. He is more aggrieved by the language employed in the operative part of the order rather than the appointment itself.

##. It is settled preposition of law now that there is no embargo on appointment of second Commissioner and that, it is not necessary that the report of the earlier Commissioner is required to be cancelled. Before appointing another Commissioner, there is no prohibition on such appointment as has been held in Melabhai Kevaldas Prajapati and others Vs. State of Gujarat (Supra).

##. Now, therefore, if impugned order is read, the trial court has come to a specific conclusion that the report of the first Commissioner lacks in giving certain details which have been brought to the notice of the trial court by the defendants - present respondents, and therefore, it is necessary that those details brought before the court before any decision is taken. The court found that, certain details like measurement of the road,

existing situation on the northern side, which is not clear from the Panchnama prepared by the first Commissioner. Now, if the operative part of the order is seen, the learned trial Judge has specifically directed that the Commissioner shall prepare a panchnama and a map indicating full details of the disputed property alongwith the situation on the northern side of the disputed property.

##. From the language of the operative part of the order, this court finds no reason to agree with the plaintiff - revisioner.

##. Apart from the above aspect, it is also to be noted that the impugned order does not fall within the term "case decided" appearing in sub-section 1 of section 115 of the Civil Procedure Code. By this order, no parties' right is conclusively decided. It cannot be said that, if the order was passed in favour of the revisioner, it would have finally decided the suit or the proceedings in favour of the revisioner, and therefore, this revision application would not fall within the frame of section 115 of the Civil Procedure Code. Therefore also, this revision cannot be entertained. Revision Application, therefore, must fail and the same is dismissed. Rule discharged. No costs.

(A.L.Dave,J)
(pathan)